



**Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

In the Matter of Claims Against the Dealer Bond
of Johnson Motors, LLC

Case Nos. TR-14-0030 and TR-14-0031

FINAL DECISION

On September 10, 2014, an employee of the Division of Motor Vehicles of the Department of Transportation filed a claim with the Wisconsin Department of Transportation (Department) against the motor vehicle dealer bond of Johnson Motors, LLC (Dealer). On August 21, 2014, Steven LaBelle filed a claim with Department against the motor vehicle dealer bond of the Dealer. Pursuant to the procedures set forth at Wis. Admin. Code § Trans 140.26, a Public Notice to File Dealer Bond Claims was published in The Milwaukee Journal Sentinel, a newspaper published in Milwaukee, Wisconsin. The notice informed other persons who may have claims against the Dealer to file them with the Department by December 29, 2014.

No additional claims were filed. The two claims that had been filed were forwarded by the Department to the Division of Hearings and Appeals. The Administrative Law Judge issued a Preliminary Determination in this matter on November 4, 2014. No objections to the Preliminary Determination were received. Pursuant to Wis. Admin. Code § Trans 140.26(5)(d) the Preliminary Determination is adopted as the final decision of the Department of Transportation.

In accordance with Wis. Stat. § 227.47 and 227.53(1)(c) the PARTIES to this proceeding are certified as follows:

Arthur Johnson
Johnson Motors LLC
1020 South 56th Street
Milwaukee WI 53214

Steven LaBelle
1123 Oakwood Manor Drive
Hubertus WI 53033

Investigator Grace Oby
DOT - Div. of Motor Vehicles
Dealer and Agent Section
PO Box 7909
Madison WI 53707

Western Surety Company
PO Box 5077
Sioux Falls SD 57117

Findings of Fact

1. Johnson Motors, LLC (Dealer) was licensed by the Wisconsin Department of Transportation (Department) as a motor vehicle dealer. The Dealer's facilities were located at 6747 West Lincoln Avenue, West Allis, Wisconsin. The Dealer was placed out of business effective January 17, 2014.

2. The Dealer had a bond in force satisfying the requirements of Wis. Stat. § 218.0114(5) from May 1, 2011, until it was cancelled effective May 1, 2014 (Bond #61069948 from Western Surety Company).

Division of Motor Vehicles Claim (TR-14-0030)

3. On January 17, 2014, Arthur Johnson, the owner of the Dealer, surrendered his motor vehicle dealer license and dealer plates to Grace Oby, an investigator for the Department's Dealer section. At the same time, Mr. Johnson gave Investigator Oby paperwork for sales the Dealer had made that were never submitted to the Department. The sales occurred during the time period between June 28, 2013, and December 27, 2013. Investigator Oby submitted 31 Wisconsin Title and Registration Applications (MV-11s) for motor vehicles that the Dealer had sold to retail customers to the Department's Division of Motor Vehicles (DMV).

4. The Dealer did not provide any payment along with the paperwork. The DMV processed the applications and issued titles and registrations to the purchasers of the vehicles without fees. The fees for the 31 MV-11s submitted by Investigator Oby total \$3,759.50. Investigator Oby made several attempts to obtain reimbursement of the unpaid fees from the Dealer. The DMV received no response from the Dealer.

5. On September 10, 2014, the DMV submitted a claim against the surety bond of the Dealer in the amount of \$3759.50. The amount of the bond claim represents the sum of the unpaid fees for the 31 MV-11s submitted to the DMV.

6. The Dealer's failure to submit the required fees along with the MV-11s constitutes a violation of Wis. Stat. § 342.06(1). A violation of Wis. Stat. § 342.06(1), in turn, constitutes a violation of Wis. Stat. § 218.0116(1)(gm) (having violated any law relating to the sale, lease, distribution, or financing of motor vehicles). The DMV sustained a loss as result of this violation.

7. The loss sustained by the DMV was caused by an act of the Dealer that would be grounds for the suspension or revocation of its motor vehicle dealer license. Accordingly, the claim is allowable. The DMV has provided documentation to support a claim in the amount of \$3,759.50, the total of the unpaid fees.

8. The DMV's claims arose during the time period between June 28, 2013, and December 27, 2013, the range of dates of the retail sales made by the Dealer for which MV-11s were not submitted to the DMV for processing. The claim was filed within three years of the ending date of the one-year period that a surety bond issued by Western Surety Company was in effect and is, therefore, a timely claim.

LaBelle Claim (Tr-14-0031)

9. On June 13, 2013, Steven LaBelle (LaBelle) purchased a 2000 Honda Odyssey minivan, vehicle identification number 2HKRL1862YH517523, from the Dealer. According to the purchase contract, LaBelle paid \$4,597.09, including taxes and registration fees, for the vehicle. A Wisconsin Buyers Guide displayed on the vehicle disclosed all the vehicle's systems and equipment to be in legal condition and that there were no problems with the vehicle.

10. After LaBelle purchased the vehicle he immediately noticed fluid leaks under the vehicle. On June 16, 2013, LaBelle took the vehicle to a Honda dealer (David Hobb Honda) to have the leaks diagnosed. The vehicle was diagnosed as having a transmission fluid leak, rack and pinion leaks, and oil leaks. The estimate to repair the transmission and rack and pinion was \$5,240. No diagnosis for the oil leaks was provided.

11. On June 26, 2013, LaBelle contacted the Dealer and informed him of the diagnosis. On June 28, 2013, LaBelle took the vehicle to Falls Auto Tech for a second inspection. Falls Auto Tech recommended installing a rebuilt transmission in the vehicle and various other repairs. On July 2, 2013, LaBelle took the vehicle back to the Dealer to discuss a contribution to the cost of the needed repairs from the Dealer. The Dealer refused to pay for any of the repairs.

12. On July 18, 2013, LaBelle took the vehicle to DJ's Transmission to have a rebuilt transmission installed in the vehicle. The total bill from DJ's Transmission to install a rebuilt transmission and replace a motor mount was \$2,428.80. On July 25, 2013, LaBelle made another request for a contribution from the Dealer towards the cost of the repairs. The Dealer refused.

13. On July 31, 2013, LaBelle filed a complaint against the Dealer with the Department. The complaint was assigned to Investigator Oby. Investigator Oby researched the vehicle's history and discovered that the Dealer had acquired the vehicle at the Milwaukee Metro Auto Auction. The seller of the vehicle at the auction was Auto

Plus. Investigator Oby contacted Auto Plus and spoke to an individual named Claude Wilcox (Wilcox). Wilcox informed Investigator Oby that Auto Plus had acquired the vehicle as a lemon and sold it “as is” at the auction. Wilcox further informed Investigator Oby that when Auto Plus acquired the vehicle it needed a new transmission and that he had major problems driving the vehicle on the highway.

14. Investigator Oby met with the Dealer and attempted to negotiate a settlement between LaBelle and the Dealer. No resolution of LaBelle’s complaint was reached. LaBelle hired an attorney to represent him in seeking reimbursement from the Dealer for the amount he spent on repairs to the vehicle. The attorney was unsuccessful. On August 21, 2014, LaBelle filed a claim against the Dealer’s surety bond. The amount of the claim is \$2819.75, which is itemized as follows:

Damages Claimed	Item Description	Amount
David Hobb Honda	Check for Leaks	\$75.53
Valvoline Instant Oil Change	Top off Transmission Fluid (Twice)	\$18.89
Blue Devil Transmission Sealer	Transmission Sealer	\$14.99
Falls Auto Tech	Inspect for leaks & Tighten Transmission fitting	\$119.19
Law Office of Keith Glaser	Dispute with Arthur Johnson	\$150.00
DJ’s Transmissions	Rebuilt Transmission	\$2,428.40
WI Dept of Transportation	Copy of Dealer Complaint	\$12.75
	Total:	\$2,819.75

15. Licensed motor vehicle dealers are required by Wis. Admin. Code § Trans 139.04(4) to disclose “significant existing mechanical defects” in used vehicles offered for sale. Dealers are required to disclose defects that can be discovered during a reasonable pre-sale inspection on a Wisconsin Buyers Guide form that is displayed on the vehicle at the time it is offered for sale. The vehicle’s transmission problems should have been discovered during a visible inspection of the vehicle and should have been disclosed on a Wisconsin Buyers Guide displayed on the vehicle at the time it was offered for sale. The motor vehicle dealer that owned the vehicle prior to the Dealer noted that the vehicle needed a new transmission and that he had difficulty driving the vehicle on the highway. LaBelle noticed fluid leaks immediately after purchasing the vehicle. It is implausible that the Dealer would not have discovered the problems with the vehicle’s transmission if he had inspected the vehicle before offering it for sale. Either the Dealer failed to perform a reasonable pre-sale inspection of the vehicle and discover these defects or, if a reasonable pre-sale inspection was performed, the Dealer failed to properly disclose the result of the inspection on the Wisconsin Buyers Guide.

16. The Dealer's failure to conduct a reasonable pre-sale inspection of the vehicle and/or accurately disclose any significant existing defects discovered during a pre-sale inspection on a Wisconsin Buyers Guide constitutes a violation of Wis. Admin. Code §§ Trans 139.04(5) and (6)(b). Violations of these sections, in turn, constitute a violation of Wis. Stat. §§ 218.0116(1)(bm) and/or (gm). LaBelle sustained a loss as the result of this violation.

17. LaBelle sustained a loss as a result of an act of the Dealer that would be grounds for the suspension or revocation of its motor vehicle dealer license. He has submitted documentation to support a claim in the amount of \$2,657.00, the cost of diagnosing the leaks and making necessary repairs to the vehicle. The other items on LaBelle's claim, attorney fees and "copy of dealer complaint," are not allowable. Wis. Admin Code § Trans 140.21(2)(e) expressly disallows claims for attorney fees. LaBelle did not submit any documentation or explanation to support the portion of the claim itemized as "copy of dealer complaint." Accordingly, this portion of the claim will also be disallowed. The bond claim was filed within three years of the ending date of the one-year period the bond issued by the Western Surety Company was in effect and is, therefore, a timely claim.

DISCUSSION

The procedure for determining claims against dealer bonds is set forth at Wis. Admin. Code Chapter Trans 140, Subchapter II. Wis. Admin Code § Trans 140.21(1) provides in relevant part:

A claim is an allowable claim if it satisfies each of the following requirements and is not excluded by sub. (2) or (3):

- (a) The claim shall be for monetary damages in the amount of an actual loss suffered by the claimant.
- (b) The claim arose during the period covered by the security.
- (c) The claimant's loss shall be caused by an act of the licensee, or the [licensee's] agents or employees, which is grounds for suspension or revocation of any of the following:

- 1. A salesperson license or a motor vehicle dealer license, in the case of a secured salesperson or motor vehicle dealer, pursuant to s. 218.01 (3)(a) 1. to 14., 18. to 21., 25. or 27. to 31., Stats. [*recodified as §§ 218.0116(1)(a) to (gm), (im) to (k), (m), and (n) to (p) in Wis. Stats. (1999-2000)*].

(d) The claim must be made within 3 years of the last day of the period covered by the security. The department shall not approve or accept any surety bond or letter of credit which provides for a lesser period of protection.

Accordingly, to allow the claim filed against the security bond of the Dealer, a finding must be made that the Dealer violated one of the sections of Wis. Stat. § 218.0116(1) identified in Wis. Admin. Code § Trans 140.21(1)(c)1, and that the violation caused the loss claimed. With respect to the DMV's claim, the Dealer's failure to submit the required fees along with the MV-11s constitutes a violation of Wis. Stat. § 342.06(1). With respect to LaBelle's claim, the Dealer violated Wis. Admin Code § Trans 139.04. Violations of Wis. Stat. § 342.06(1) and Wis. Admin Code § Trans 139.04, in turn, constitute a violation of Wis. Stat. § 218.0116(1)(gm) (having violated any law relating to the sale, lease, distribution, or financing of motor vehicles). Wis. Stat. § 218.0116(1)(gm) is identified in Wis. Admin. Code § Trans 140.21(1)(c)1. The DMV and Steven LaBelle each sustained a loss as a result of the respective violations.

CONCLUSIONS OF LAW

1. The DMV's claim arose during the time period between June 28, 2013, and December 27, 2013. Western Surety Company issued a one year surety bond to the Dealer covering a one-year period commencing on May 1, 2013. The claim arose during the period covered by the surety bond.
2. The DMV filed claim against the motor vehicle dealer bond of the Dealer on September 10, 2014. The bond claim was filed within three years of the last day of the period covered by the surety bond. Pursuant to Wis. Admin. Code § Trans 140.21(1)(d), the claim is timely.
3. The DMV's loss was caused by an act of the Dealer which would be grounds for suspension or revocation of its motor vehicle dealer license. Pursuant to Wis. Admin. Code § Trans 140.21(1)(c), the claim is allowable. The DMV has provided documentation to support a claim in the amount of \$3,759.50.
4. Steven LaBelle's claim arose on June 13, 2013, the day he purchased the vehicle from the Dealer. Western Surety Company issued a one year surety bond to the Dealer covering a one-year period commencing on May 1, 2013. The claim arose during the period covered by the surety bond.
5. Steven LaBelle filed a claim against the motor vehicle dealer bond of the Dealer on August 21, 2014. The bond claim was filed within three years of the last day of the period covered by the surety bond. Pursuant to Wis. Admin. Code § Trans 140.21(1)(d), the claim is timely.

6. Steven LaBelle sustained a loss as the result of an act of the Dealer that would be grounds for suspension or revocation of the Dealer's motor vehicle dealer license. Mr. LaBelle has submitted documentation to support a claim in the amount of \$2657.00.

7. The Division of Hearings and Appeals has authority to issue the following orders.

Orders

1. The claim filed by the Division of Motor Vehicles against the motor vehicle dealer bond of Johnson Motors, LLC, is APPROVED in the amount of \$3759.50. Western Surety Company shall pay the Division of Motor Vehicles this amount for the loss attributable to the actions of Johnson Motors, LLC.

2. The claim filed by Steven LaBelle against the motor vehicle dealer bond of Johnson Motors, LLC, is APPROVED in the amount of \$2657.00. Western Surety Company shall pay Mr. LaBelle this amount for his loss attributable to the actions of the Dealer.

Dated at Madison, Wisconsin on June 25, 2015.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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Madison, Wisconsin 53705-5400
Telephone: (608) 266-7709
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By: _____

MARK F. KAISER
ADMINISTRATIVE LAW JUDGE

NOTICE

Set out below is a list of alternative methods available to persons who may wish to obtain review of the attached decision of the Administrative Law Judge. This notice is provided to insure compliance with Wis. Stat. § 227.48 and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Department of Transportation a written petition for rehearing pursuant to Wis. Stat. § 227.49. A copy of any such petition for rehearing should also be provided to the Administrative Law Judge who issued the order. Rehearing may only be granted for those reasons set out in Wis. Stat. § 227.49(3). A petition under this section is not a prerequisite for judicial review under Wis. Stat. §§ 227.52 and 227.53.

2. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefore in accordance with the provisions of Wis. Stat. §§ 227.52 and 227.53. Said petition must be filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (1) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Pursuant to Wis. Admin. Code § TRANS 140.26(7), the attached final decision of the Administrative Law Judge is a final decision of the Department of Transportation, so any petition for judicial review shall name the Department of Transportation as the respondent. The Department of Transportation shall be served with a copy of the petition either personally or by certified mail. The address for service is:

Office of General Counsel
4802 Sheboygan Avenue, Room 115B
Wisconsin Department of Transportation
Madison, Wisconsin 53705

Persons desiring to file for judicial review are advised to closely examine all provisions of Wis. Stat. § 227.52 and 227.53 to insure strict compliance with all its requirements.